

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/LETTERS PATENT APPEAL NO. 585 of 2026****In****R/SPECIAL CIVIL APPLICATION/109/2017****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2026****In****R/LETTERS PATENT APPEAL NO. 585 of 2026**

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THE MUNICIPAL COMMISSIONER, AHMEDABAD MUNICIPAL
CORPORATION & ANR.

Versus**SUSHILABEN PRANLAL PANDYA & ANR.**

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Appearance:

MR DEEP D VYAS(3869) for the Appellant(s) No. 1,2**MR BHAVESH DESAI AGP for the Respondent(s) No. 2****MR IM PANDYA(546) for the Respondent(s) No. 1**

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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA
and

HONOURABLE MR. JUSTICE R. T. VACHHANI**Date : 14/07/2026****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

By way of this Letters Patent Appeal under clause 15 of the Letters Patent Act, the appellant – the Municipal Commissioner, Ahmedabad Municipal Corporation - original respondent No.2 challenges the oral order dated 23/07/2025 passed in SCA No.109 of 2017, whereby the learned Single Judge has allowed the said SCA and directed the appellants to incorporate the yearly increments that the respondent herein was entitled to during the period of probation of three years and to re-fix her pension.

2. The short facts for adjudication of the present appeal as emerging from the impugned order are that respondent was appointed as Staff Nurse in the year 1982 and during the said tenure, an advertisement was published in the year 2010 for the post of Assistant Nursing Tutor whereupon the respondent herein applied and appointed while incorporating condition viz., condition No.6 in the appointment order granting pay-protection with the salary and benefits currently she is receiving for the post of Staff Nurse at Sheth V S Hospital until she complete her probationary period (three years as an assistant) in the post of Assistant Nursing Tutor. However, in spite of this specific pay protection was granted to the respondent herein, the appellant herein while confirming the services as a Nursing Tutor have imposed a condition that for the period when respondent worked as a probationer on a fixed salary for a period of three years, the said period shall not be considered for computing the pension, bonus, LTC and other benefits.

2.1 The respondent therefore made several representations before the authority; however the same has not found favour and ultimately the respondent moved this Court by filing a Special Civil Application seeking direction to the appellant to revise her pension and re-fix the pension by incorporating the increments for the period during which respondent discharged her duty as a probationer i.e. from 2010 to 2013.

2.2 The relief prayed for by the respondent is opposed by the appellant on the ground that the respondent having accepted the post of Assistant Nursing Tutor and was on the fixed salary during the period of probation, she cannot be permitted to seek for the benefits of the increments and it

was therefore submitted that the petition may be dismissed.

3. The learned Single Judge of this Court after hearing the learned Advocates appearing for the respective parties and considering the pleadings made before the Court allowed the said writ petition and directed the appellants to incorporate the yearly increments that the respondent was entitled to during the period of probation of three years and to re-fix her pension.

4. Learned Advocate Mr. Deep Vyas appearing for the appellant – Corporation would submit that the pay protection only safeguards the last drawn salary and does not confer entitlement to increments during probation, more particularly, when the nature of appointment was fresh appointment. He would further submit that the recruitment rules contemplated the appointment on fixed pay during the probation; whereas the administrative orders cannot travel beyond the statutory recruitment rules. Learned Advocate for the appellant would submit that the respondent having accepted the appointment on the post of Assistant Nursing Tutor and known to the fact that it was a fixed salary during the period of probation, respondent may not be entitled to such benefits.

4.1 Learned Advocate for the appellant would further submit that when the respondent was made permanent on the post of Assistant Nursing Tutor as per the Resolution No.G.D. Est No.1/0914, whereby the period of probation was reduced to three years from five years; with a condition that the respondent would not be entitled to the pension, LTC, encashment of leave, or any other financial benefit, for the period from

the date of her appointment in the fixed pay till the period of her regular appointment in the regular grade pay, which was granted as per condition No.6 in the appointment order. He would therefore submit that the respondent would not be entitled to any such benefits for the fixed term period.

4.2 By making the aboves submissions, learned Advocate for the appellant would submit to allow the present appeal.

5. *Per contra*, learned Advocate appearing for the respondent – employee would submit that the learned Single Judge has after considering the facts of the case and the material placed before the Court, more particularly, the condition No.6 of the appointment order has granted such benefits and therefore, it cannot be said that the impugned order suffers from any illegality or perversity. He would further submit that the learned Single Judge has passed the well reasoned order and therefore, this Court may not interfere with the same and dismiss the appeal.

5.1 Learned Advocate for the respondent – employee would further submit that present appeal has been preferred only after the respondent – employee moved this Court under the Contempt of Courts Act seeking to implement the directions issued by the learned Single Judge and thus the filing of the present appeal is nothing; but an attempt to frustrate the very purpose of implementation of the directions issued by the learned Single Judge in the contempt proceedings and therefore, in his submissions the present appeal may be dismissed.

6. Having heard the learned Advocates appearing for the respective parties and examining the impugned order passed by the learned Single Judge, what transpires from the record that while appointing the respondent on the post of Assistant Nursing Tutor, the specific condition was incorporated in the order of appointment viz., condition No.6 that *since the respondent was serving as a Staff Nurse at Sheth V. S. Hospital for a long time, she shall be granted pay protection with the salary and benefits she currently receives for the post of Staff Nurse until she completes her probationary period (three years as an Assistant) in the post of Assistant Nursing Tutor.* Thus, the respondent was though under the probation for a period of three years, during which, under the terms of appointment, though she was to get a fixed salary in the normal course, she would be getting the same pay and the benefits flowing from her original post of Staff Nurse and therefore the respondent would be entitled not only to the same salary she received but also to the increments which would automatically accrued on her salary on the post of Staff Nurse. The learned Single Judge has categorically dealt with and discussed the issue of pay-protection in paragraph 8 and 9 of the impugned order which is quoted hereunder and this Court does not find any infirmity in the impugned order.

“(8) As already stated above, the very concept of pay protection is to ensure that an employee's pay is protected and this would be in the light of the fact that the new appointment would entail a reduction in the pay. The respondents while appointing the petitioner as an Assistant Nursing Tutor have categorically assured the petitioner that she would be granted pay protection not

only with the salary but also the benefits that she currently received as a Staff Nurse. It cannot be in dispute that the benefit of securing yearly increment is also a benefit that goes along with the salary that the petitioner was getting as a Staff Nurse. The respondents by virtue of granting pay protection not only in the salary but also the benefits cannot be permitted to contend that the grant of increments for the probationary period of three years cannot be considered while computing the pensionary benefits of the petitioner.

(9) As far as the argument that the petitioner accepted the order of appointment, which excluded this benefit of increments for three years and she thereafter has filed the petition in the year 2017 is concerned, it is to be held that the respondents cannot approbate and reprobate. The respondents were categorical in 2012 when they appointed the petitioner and had stated that the pay and the other benefits of the petitioner was getting as a Staff Nurse would be protected. This pay protection of both the salary and the benefits cannot be undone by imposing a condition while confirming the services of the petitioner as an Assistant Nursing Tutor. It is to be kept in mind that the terms of appointment would prevail and these terms of appointment cannot be modified or reduced to the detriment of the an employee at the time of her confirmation.”

Thus, this Court may not require to reiterate the findings arrived at by the learned Single Judge and is in complete agreement with the same

as the condition No.6 mentioned in the appointment order issued by the appellant itself granting the pay-protection with the salary and other benefits until she completes the probation period; which later on, cannot be permitted to be modified without there being any substance.

7. In the result, the appeal fails and is accordingly dismissed. Consequently, the appellants are directed to extend the benefits of yearly increments which the respondent – employee was entitled to during the period of probation of three years and accordingly to re-fix her pension. Such exercise of re-fixation of pension as well as actual compliance shall be undertaken within a period of two months from the date of receipt of the writ of this order.

8. In light of dismissal of the appeal, Civil Application for stay would not survive and stands dismissed.

9. Before parting with the order, it is made clear that finding recorded herein above shall be confined to the case on hand only and shall not be treated as precedent in any case.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

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